



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35504]

Union Pacific Railroad Company—Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: In response to a petition filed by Union Pacific Railroad Company (UP) on April 27, 2011, the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e). UP requests that the Board issue a declaratory order to resolve a controversy regarding the reasonableness of the indemnification provisions in UP's tariff relating to transportation of toxic by inhalation hazardous commodities (TIH). The Board seeks public comment on the issues raised in this case.

DATES: Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than December 27, 2011, a notice of intent to participate.

Opening evidence and argument from all PORs is due on January 25, 2012. Reply evidence and argument from all PORs is due on March 12, 2012. Rebuttal evidence and argument from all PORs is due on March 26, 2012.

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies (and also an electronic

version), referring to Docket No. FD 35504, to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, 1 copy of each filing in this proceeding must be sent (and may be sent by e-mail if service by e-mail is acceptable to the recipient) to each of the following (1) Michael L. Rosenthal, Covington & Burling LLP, 1201 Pennsylvania Avenue, N.W., Washington, DC 20004-2401, mrosenthal@cov.com (representing UP); (2) David L. Coleman, Law Department, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-9241, david.coleman@nscorp.com (representing Norfolk Southern Railway Company); (3) David F. Rifkind, Leonard, Street, and Deinard, 1350 I Street, N.W., Suite 800, Washington, DC 20005, david.rifkind@leonard.com (representing Canadian Pacific Railway Company); (4) Gregory M. Leitner, Husch Blackwell LLP, 736 Georgia Avenue, Chattanooga, TN 37402, gregory.leitner@huschblackwell.com (representing Olin Corporation and SunBelt Chlor Alkali Partnership); (5) Peter A. Pfohl, Slover & Loftus LLP, 1224 17th Street, N.W., Washington, DC 20036-3003, pap@sloverandloftus.com (representing Dyno Nobel Inc.); (6) Jeffrey O. Moreno, Thompson Hine LLP, 1920 N Street, N.W., Washington, DC 20036, jeff.moreno@thompsonhine.com (representing The Fertilizer Institute and the American Chemistry Council); (7) Paul M. Donovan, LaRoe, Winn, Moerman & Donovan, 1250 Connecticut Avenue, N.W., Suite 200, Washington, DC 20036, paul.donovan@laroelaw.com (representing The Chlorine Institute); and (8) any other person designated as a POR on the service-list notice (as explained in the Board's decision served on December 12, 2011¹).

¹ The service-list notice will be issued as soon after December 27, 2011, as

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 245-0359.

[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1-800-877-8339].

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's website.

SUPPLEMENTAL INFORMATION: UP's petition requests a declaratory order regarding Items 50 and 60 of UP Tariff 6607, "General Rules for Movement of Toxic or Poison Inhalation Commodity Shipments over the Lines of the Union Pacific Railroad," which are attached as an exhibit to the petition. These tariff provisions require TIH shippers to indemnify UP against all liabilities except those caused by the sole, contributory, or concurring negligence or fault of UP. UP's petition raises questions about what constitutes a reasonable request for service involving transportation of TIH under 49 U.S.C. 1101(a) and what rules and practices a rail carrier can reasonably establish in its response to a request to transport TIH under 49 U.S.C. § 10702.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The issues raised by UP merit further consideration, and a declaratory order proceeding is thus instituted here. Due to the significance of this matter to TIH shippers, railroads, and other interested parties, we are opening this declaratory order proceeding for public participation. Any person seeking to comment on the issues raised in UP's petition may submit written comments to the Board pursuant to the schedule and procedures set forth in this notice.

practicable.

For further information, please see the Board's decision served on December 12, 2011, in Docket No. FD 35504.

Board decisions and notices are available on our website at
“WWW.STB.DOT.GOV.”

Decided: December 8, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner
Mulvey.

Jeffrey Herzig

Clearance Clerk

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